IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.674 OF 2004
IN
SUMMARY SUIT NO.467 OF 2004

M/s.Dharamsi Morarji Chemical Co. Ltd. ..Plaintiffs.

Vs.

M/s. Sheetal Enterprise & Ors. ..Defendants.

Mr.Premlal i/b.M/s.Shreeji & Lal for the Plaintiffs.

Mr.M.C.Shah i/b.Mr.A.K.Rao for the Defendants. None for the Defendants.

CORAM: S.J.VAZIFDAR, J.
DATED: 24TH AUGUST, 2005

P.C. :

The suit is filed to recover a sum of Rs.9,19,125/- in respect of the goods sold and delivered by the Plaintiffs to the Defendants. Part-payments were made.

2. The Plaintiffs by their letter dated 7.7.2001 addressed to the Defendants, stated that as per its books of accounts, an amount of Rs.9,33,935/- was due and payable by the Defendants to the Plaintiffs. On that letter, the Defendants made the following endorsement :

> "As per our Books the outstanding is Rs.9,12,775=00. Accordingly, Please check

the Amount & correct it"

3. The Defendants therefore admitted that the said amount was due and payable. In the subsequent correspondence, the Defendants have fairly and honestly admitted their liability. By letter dated 26.3.2002, the Defendants stated that their intention was not bad and that they were willing to make payment but were presently unable to do so due to the adverse market situation. The Defendants have therefore requested the Plaintiffs to bear with them for some more time to enable the Defendants to arrange funds. It was categorically stated that the Defendants would definitely clear the dues by arranging the funds from other sources.

4. By letter dated 16.7.2002, the Defendants once again stated that there was only minor negligible difference in the amount between the parties and that otherwise the amount was admitted. The Defendants made certain proposals but the same were not accepted.

5. I permitted the Plaintiffs to proceed on the basis of denials. The Defendant’s conduct prior to the filing of the suit was honest. In that, they

did not deny the liability dihonestly but only sought time to discharge the same. However, after the suit was filed, an affidavit in reply was filed, which is totally dishonest.

6. Firstly, it was contended that the suit was barred by law of limitation. There is no substance in this contention as the suit was filed on 9th January, 2004 and not in December, 2004 as alleged. It was further alleged that there was an oral understanding between the parties that the Plaintiffs would accept certain machinery in lieu of the payment. On being repeatedly asked, the learned counsel appearing on behalf of the Defendants admitted that there was no evidence to substantiate the same.

7. In the circumstances, there is no defence to the suit.

8. The Summons for Judgement is therefore made absolute and the suit is decreed as prayed.

Refund as per rules.